IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/04/2004

Coram

The Honourable Mr. Jutice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. KARPAGAVINAYAGAM

W.P. No.10860 OF 2001

P.S. Balasubramaniam ... Petitioner

-Vs-

1. The Government of Tamil Nadu
rep. by its Secretary to Government
Finance (Pay Cell) Department
Chennai 600 009

2. The Accountant General of Tamil Nadu
Teynampet
Chennai 600 018

3. The Pension Pay Officer
Chennai 600 006 ... Respondents

Petition under Art.226 of the Constitution, praying for a
Writ of Certiorarified Mandamus as stated in the petition

For Petitioner :: In person

For Respondents :: Mr. S.T.S. Murthy, Spl.G.P.
Asst. by Mr. Muralidharan
Mr. T. Ravikumar for R2

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

In the present writ petition, the petitioner, who retired as a Deputy Registrar of this High Court, seeks increased pension. Shortly stated, the case of the petitioner is that he retired on 31-3-1996 and till that time, there was no implementation of the recommendations of the VI State Pay Commission. He was drawing the basic pay of Rs.4,2 00 and a special pay of Rs.150/- in the pre-revised scale of pay of Rs.3700-5300. On his retirement, his basic pension was fixed at Rs.2,403/- per month with effect from 1-4-1996.
1.1. There was, in the meantime, Fifth Pay Commission at the instance

of the Government of India and ultimately, the Government of India also accepted the recommendations of the said Pay Commission with regard to the employees of the Central Government. The State Government, on its part, constituted a Financial Committee to examine the question of revision of pay and allowances of the State Government employees and teachers based on the recommendations of the V Central Pay Commission. This Committee submitted its report on 16-3-1998 and based on its recommendations, a Government Order, G.O. Ms. No.162 Finance (Pay Cell) dated 13-4-1998 came to be issued. According to this Government Order, the pay of the employees of the State Government was directed to be fixed in the new scales of pay with effect from 1-1-1996. In pursuance of that, the petitioner's salary was fixed at Rs.12,37 5/-, which was about Rs.8,025/- more than his last pay drawn. There is no dispute that the arrears of pay have been received by him as per the formula laid down by the State Government for the three months that he served after 1-1-1996.

1.2. The State Government thereafter passed a Government Order, G.O. No.174 dated 21-4-1998 for re-fixing the pension payable to the retired Government employees. Under this, some principles were laid down for revising the pension, viz.

(a)Basic Pension (Pension before commutation) including personal pension;
(b)related dearness allowance as on 1-1-1996;
(c)the first instalment of Interim Relief of Rs.50/-;
(d)the second instalment of Interim Relief of 10% of the pension; and
(e)40% increase in basic pension.

Under this Government Order, even the persons who had retired earlier to 31-10-1995 were to get the revised pension. Petitioner's case is that a person, who retired on or before 31-12-1995 and drawing a basic pension of Rs.2,403/- would get the revised pension of Rs.6,324/-. There was, however, a different principle adopted in respect of those persons who had retired from service in between 1-1-1996 and 30 -6-1996. It was mentioned in paragraph 7 of the said Government Order that the pension was to be fixed at fifty per cent of the average of the last ten months' pay drawn by that person. The petitioner feels aggrieved by this, as, according to him, that amount is lesser than the amount of pension payable to those person who had retired on or before 31-12-1995. In respect of the employees, who were to retire after 1-7-1996, they were to get the pension at the rate of fifty per cent of the last pay drawn by them. However, in case of the petitioner, the formula applied was the fifty per cent of the average of last ten months' pay. The petitioner submits that this is discriminatory.

1.3. Because of the complaint made, the Government came out with another Government Order, viz. G.O. No.200 dated 18-5-1999 whereby, some further changes came to be made. Under that Government Order, a further respite was given to the persons like the petitioner, who had retired between 1-1-1996 and 30-6-1996. The relevant paragraph reads as follows:

"In respect of those retired from service between 1-1-1996 to 30-6-19 96 whose pension was calculated based on 10 months average pay, if the pension fixed in the revised scale of pay is less than 50% of the minimum of the revised time scale of pay granted with effect from 1-1-1996 applicable to the post last held by the employees concerned at the time of retirement, the pension shall be raised to the level of 50 % of the minimum of that time scale."

It may not be out of place to state that by G.O. Ms. No.200, the Government had agreed to pay fifty per cent of the minimum of revised time scale of pay

introduced with effect from 1-1-1996 to those employees who had retired from services prior to 1-1-1996. Perhaps, it is only on that ground that same benefit was given to the persons who had retired between 1-1-1996 and 30-6-1996 by equating them in case their pension calculated by the earlier method was lesser than fifty per cent of the minimum revised time scale of pay. Petitioner, however, pleads that this becomes discriminatory though his pension was ultimately raised to Rs.6,000/- since the post he held when he retired carried the scale of pay of Rs.12,000-16500. The advantage of the pension was given to him in terms of G.O. No.200, referred to earlier. Needless to mention that these pension benefits are to be granted not with effect from 1-1-1996 but with effect from 1-4-1999.

1.4. Petitioner is aggrieved on both counts. According to him, the pension benefits should have been given with effect from 1-1-1996 and not with effect from 1-4-1999. Secondly, he says that his pension should be at least on par with the employees drawing the pension of Rs.2,403/- before 31-12-1995. Petitioner has shown us a table which suggests that a person who drew the pension of Rs.2,403/- on or before 31-12-1995 would draw the pension of Rs.6,324/-. He suggests that in his being granted the pension of Rs.6,000/-, he is being put to a loss in the sense that, a person who has retired earlier on the same pension would be getting the better benefit and the better pension than the petitioner, who has in fact retired three months after that person. This, in short, is the case of the petitioner.

2. Now few undisputed facts. The petitioner's pension was fixed at Rs.5,230/- on the basis of his ten months' average pay. By the application of G.O. No.199, his pension was increased to Rs.5,985/- with effect from 1-4-1996. Ultimately, giving him the advantage of G.O. No.200, his pension was increased to Rs.6,000/- with effect from 1-4-1999. It is on this background that we have to test as to whether the petitioner can claim any discrimination against him in fixation of pension.

3. We shall first take up the point of applicability of the date from which the petitioner is directed to be paid his arrears of pension. For that, the Government has pleaded in the counter that there was a financial crunch in the State and the financial liability on account of payment of pension was the highest in case of State of Tamil Nadu. The Government has pleaded that it is by way of policy that a cut-off date was fixed, i.e. 1-4-1999. In a case of similar nature (W.P. No.400 of 2000, decided on 7-4-2004), we have approved of that policy also. There can be no doubt that the Government by way of policy could fix a date as cut-off date for bestowing the benefits of the revised pension. In the said judgment, we have already held that there was nothing wrong in the policy framed by the Government to bestow the revised pensionary benefits with effect from a particular date. We also did not find it discriminatory at all. It was after all a question of bestowing the pensionary benefits. The Government was not taking away or reducing the benefits. It was only a question of bestowing the benefits on the living pensioners with effect from a particular date. We found the Government policy also to be sound, non-discriminatory and as such we agreed in that petition that the policy could not be assailed on the ground that it was discriminatory. We adopt the same reasoning here also. Therefore, the first contention that the fixation of the date for grant of benefits of the

revised pension with effect from 1-4-1999 and not with effect from 1-1-1996 is discriminatory is rejected. This takes us to the second contention raised by the petitioner.

4. The petitioner pleads that persons who retired on or before 31-1 2-1995 and drawing the pre-revised pension of Rs.2,403/- would get the revised pension of Rs.6,324/- whereas, he would get the pension of Rs.6,000/- only and that, according to him, is incongruous. We do not agree. After all 1-1-1996 was a cut-off date fixed by the Government and after that date, the recommendations of the V National Pay Commissions were accepted and by way of VI State Pay Commission, the pay-scales of the State Government employees and the living pensioners were revised. Petitioner cannot deny that he got the increased salary with effect from 1-1-1996 as per the State Government's formula fixed for that purpose. This was, therefore, the advantage the petitioner got under the VI State Pay Commission. He cannot compare his case with those persons who retired from State Government service on or before 31-12-1995 because there will be a clear-cut distinction between the same. Petitioner was an employee who got the benefits of the increased salaries on account of the application of the recommendations of the V National Pay Commission, which was accepted by the VI State Pay Commission. This is apart from the fact that the petitioner's earlier fixed pension was also increased owing to G.O. No.200. It is not as if the petitioner was singled out alone. All the persons, who were the co-travellers with the petitioner, have been given the same treatment. They got the increased salary with effect from 1-1-1996 . They got the benefits of the increased pension also just as the petitioner got. In fact, the petitioner has not argued before us the constitutionality of G.O. No.200. His sole contention is that had he retired before 31-12-1995, he would have got more pension. However, the petitioner forgets that he would not be able to get more salary which he got after 1-1-1996 till 31-3-1996, the day on which he has retired. He has, in fact, drawn the full benefits of V National Pay Commission as also the VI State Pay Commission and, therefore, there would be no question of now turning back and complaining that he was paid less when compared to those persons who were retired on or before 31-12-1995. We do not think that that will be a correct thing to do for the petitioner. We, therefore, do not see any merit in the petitioner's claim. The petitioner's pension has undoubtedly been fixed in a correct way in keeping with G.O. No.174, G.O. No.199 and ultimately G.O. No.200. We do not see anything wrong in the calculation. Petitioner's case has no merits. It is dismissed but without any orders as to the costs.

Index:Yes
Website:Yes

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To:

1. The Secretary to Government
Finance (Pay Cell) Department

State of Tamil Nadu
Chennai 600 009

2. The Accountant General of Tamil Nadu
Teynampet
Chennai 600 018

3. The Pension Pay Officer
Chennai 600 006